

The Patriot's Dilemma

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The Duty to Resist

Sooner or later most Americans take the oath: *To preserve, protect, and defend the Constitution of the United States against all enemies, foreign or domestic.*

Actually, all Americans have the duty expressed in the oath by being citizens. Taking the oath just formalizes it.

Under our constitutional republican form of government, the Constitution is the Supreme Law. That means that it is superior to any statutes or other official acts that may be adopted later, if there should be a conflict between the Constitution and such statutes or acts. Indeed, any such statutes or acts derive their authority from the Constitution, and statutes or acts not based on it are null and void from their inception.

Under the Social Contract which precedes the Constitution, citizens have the duty to both obey all laws that apply to their situation, and to help enforce such laws. But if the situation should arise in which there is a conflict between laws or acts, the citizen has the duty to resolve the conflict by obeying or enforcing the superior law or act, especially if one of the laws is the Constitution itself. Indeed, if the statute or act violates some right or exceeds delegated powers, it is most likely to be a violation of law itself, and so the duty of the citizen is not just to not obey or help enforce it, but to actively resist it, by enforcing the law which it violates.

Under the prior Law of Agency, the citizen is responsible for the acts of his agents, including their abuses if he fails to take action to correct them, and under the Social Contract, he is personally responsible for resolving legal conflicts and for the legal decisions he makes. Therefore, he cannot delegate the responsibility for making such legal determinations to others, such as judges, superiors, or legal advisors. He has the duty to make an independent determination of the constitutionality of any law or act with which he may become involved.

Varieties of Unconstitutionality

There are several ways in which statutes or other official acts may be unconstitutional:

- (1) It may be contrary to a right guaranteed under the Constitution.
- (2) It may not be based on one of the powers delegated to the government under the Constitution.
- (3) It may violate the provisions for the structures and procedures of government, such as the delegation of legislative or judicial powers to an executive agency in violation of the separation of powers principle of the Constitution.

- (4) It may neglect to perform some duty imposed under the Constitution.
- (5) It may involve the operation of government outside its constitutional jurisdiction.
- (6) It may not be applied in the way it was intended by those who wrote and adopted the original act.
- (7) It may be vague or incomprehensible to the people who must obey or enforce it.
- (8) It may have been intended to be applied selectively, or have come to be applied selectively, in violation of the equal protection provision of the Constitution that all laws must be applied uniformly.
- (9) Proper notice of the law or act may not have been given in a way that would allow people subject to it to become aware of it.
- (10) The aggregate of laws or regulations may become so burdensome that it becomes unreasonable for everyone subject to it to be sufficiently familiar with it to comply with all of it.
- (11) It may have never been properly adopted, or due process may not have been practiced.
- (12) Information needed to make a proper determination may have been withheld or distorted in a way that is intended to mislead or which has that effect through negligence.

The Magnitude of the Conflict

Now, when the conscientious patriot surveys the present state of statutes, regulations, judicial decisions, executive orders, and other official acts, he finds that the body of such acts which is incompatible with the Constitution is vast. Major bodies of legislation and entire federal agencies and their operations are unconstitutional. Yet they are being enforced, and that enforcement backed by the entire power of government. What is worse, most of the people are unaware of this conflict, or unconcerned about it. Too many people do not place enough emphasis on compliance with the Constitution.

The Dilemma

Is it the Patriot's Dilemma, then, that he is obligated by his oath to not only not obey or help enforce major areas of governmental activity, but to actively resist it by all available means? No, his dilemma is that there are so many matters on which he is obligated to resist that he does not have the resources to fight all the battles. It is all too easy to expend all his precious resources on less important matters, and thereby neglect the more important ones. Just as a warrior must sometimes make a tactical retreat, yielding territory in order to preserve his ability to fight and win more important battles, so must the patriot also make some strategic and tactical decisions about which battles are important, and which must be temporarily conceded.

This dilemma also causes disagreement among patriots about which battles to fight and which to retreat from, leading to divisions and accusations of betrayal if some of the battles are considered important by some patriots. For patriots to be effective in restoring constitutional government, they must unite and agree on priorities.

Assigning Priorities

The following are some guidelines for deciding priorities.

- (1) High priority must be given to developing and maintaining unity, organization, and communications among patriots. We can't do anything else if we are not united.
- (2) We must develop and maintain the physical means to defend our rights and enforce compliance with the Constitution. The most important parts of that are weapons, local militias, and communications systems.
- (3) We must educate the public to the problem and its importance, and thereby increase the numbers of activists and the level of public support. One way to do this is to bring it to the attention of the public and public officials at every opportunity, and make it an issue in election campaigns.
- (4) We must focus on those mechanisms by which official corruption and abuse can be investigated, exposed, and prosecuted. This mainly means grand juries and public access thereto, public access to official information and exposure of misconduct concealed by improper secrecy classifications, and public access to the mass media and the means to propagate such exposures.
- (5) We must focus on those officials with primary responsibility for criminal investigation at the local level. This mainly means elected sheriffs, constables, judges, and prosecutors.
- (6) We must get constitutional judges and sheriffs appointed or elected at all levels, and get rid of those who are not.
- (7) We must make sure elections are conducted honestly, such as by insisting on paper ballots and public counting of them.
- (8) We must make sure trial juries are fully informed of their right and duty to judge the law as well as the facts in a case.
- (9) We must improve the quality and depth of constitutional education in the public schools, colleges, and law schools, and the attention given to constitutional issues by the media.
- (10) We must work for measures, such as public financing of election campaigns, which might make candidates less dependent on special- interest contributions.
- (11) We must take over both major parties, beginning at the local level, replacing establishment figures with constitutionalists, with the focus on the nominating process.
- (12) We must work to repeal unconstitutional legislation, based on their unconstitutionality and not just on our policy preferences, and to reduce funding for unconstitutional federal activities if we cannot completely eliminate them.
- (13) We must be prepared to support some constitutional amendments to delegate powers to government for which a consensus has developed.
- (14) We must identify excessive, unbalanced, and unchecked concentrations of power in both the public and private sectors that need to be reduced, balanced, or checked. We need to establish better mechanisms to make officials accountable, especially law enforcement officials themselves, through independent institutions with powers to investigate and prosecute them.

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